



[TRANSLATION]

November 30, 2016

Mr. Scott Simms, Chair
Standing Committee on Fisheries and Oceans
House of Commons

Subject: Comments regarding the review of the *Fisheries Act* (2012)

Dear Mr. Scott:

The James Bay Advisory Committee on the Environment (JBACE) hereby submits its comments for the Standing Committee on Fisheries and Oceans' current review of the *Fisheries Act*. The JBACE is acting under its mandate as advisory body to the responsible governments concerning the formulation of laws and regulations that could potentially impact the environmental and social protection regime established by Section 22 of the James Bay and Northern Québec Agreement (JBNQA). These are preliminary comments, as the JBACE expects to examine any amendments to the *Fisheries Act*.

In the spirit of the review mandate conferred on the Standing Committee, the JBACE believes that certain protections that were weakened in 2012 need to be restored. The purpose of the *Fisheries Act* should be refocused on protecting fish and fish habitat rather than protecting fisheries. From a species conservation perspective, assessing a project's impacts on fish populations and fish habitat is more appropriate than assessing its impacts on fisheries, since change in fishery productivity is an indirect measurement influenced by a myriad of other factors that are often difficult to measure and control.

Moreover, the 2012 changes leave it mostly to Aboriginal and non-Aboriginal fishers to determine the existence of an active fishery. In our opinion, sections 6 and 35 of the *Fisheries Act* should be revised to prohibit the causing of harm to *any* fish, for any fish could be fished or sustain a fishery. This is particularly true in the territory of Eeyou Istchee James Bay, where every body of water forms part of a family hunting ground where Crees exercise their hunting, fishing and trapping rights.

Furthermore, in the interests of transparency, the JBACE recommends that the Minister's decisions be entered in a public registry, along with the reasons for the decision, including the consideration given to the four factors stipulated in section 6 of the Act, namely: the contribution of the relevant fish to the ongoing productivity of fisheries; fisheries management objectives; measures to avoid, mitigate and offset harm; and the public interest. In the JBACE's opinion, this

is key to increasing public understanding and trust in the authorization process for projects near water.

We understand that the current authorization system under the 2012 *Fisheries Act* takes into consideration the impacts of major projects on fisheries. For projects that pose a lower risk to fish and fish habitat, the JBACE worked with the Fisheries and Oceans Canada regional office and the Cree Nation Government to establish an information exchange program¹ for project proponents and the Crees.

Moreover, Fisheries and Oceans Canada encourages proponents to avoid and minimize project impacts on fish by self-assessing the impacts of their projects on fisheries. However, self-assessment is valid only insofar as proponents have access to information on fisheries and fish populations occurring in the study area; hence the proposed information exchange program. The program also gives proponents an opportunity to inform the Crees about the characteristics of their project and solicit comments.

The JBACE recommends that an information exchange program similar to the one it proposed be made mandatory, through legislative or regulatory changes, to ensure that Aboriginal fisheries are taken into consideration.

The Fisheries Protection Policy arising from the 2012 changes to the *Fisheries Act* places emphasis on the precautionary principle and management of threats to the sustainability of fisheries. The JBACE endorses this approach while stressing that its application depends on the availability of environmental data. Such data would highlight the changing environmental context due to, among other things, climate change and the cumulative effects of development.

In the Eeyou Istchee James Bay Territory in particular, data collected during specific projects are rarely available to the public. Yet, a proper assessment of project impacts on Aboriginal and recreational fisheries demands an assessment of the baseline conditions in the study area. Furthermore, without thorough knowledge of the project environment, application of the mitigation hierarchy (avoid-minimize-offset) is limited.

The JBACE believes that an environmental data acquisition and dissemination program specific to the Territory is required. In the context of the *Fisheries Act* review, Fisheries and Oceans Canada, proponents and First Nations can contribute to the program by pooling the knowledge acquired on ecosystems.² This knowledge would enable better environmental integration of development projects and enhance decision-making.

¹ See the [current draft of the guidance document](#).

² In the case of Aboriginal traditional knowledge, applicable confidentiality conditions must be respected.

Scott Simms, Standing Committee on Fisheries and Oceans

Yours truly,

[ORIGINAL SIGNED]

Pascale Labbé
Chairperson

cc: Dominic Leblanc, Minister of Fisheries and Oceans
Matthew Coon Come, Chair, Cree Nation Government and Eeyou Istchee James Bay
Regional Government
Patrick Vincent, Regional General Director - Quebec Region, Fisheries and Oceans Canada